

THE NAVAJO NATION
LEGISLATIVE BRANCH
INTERNET PUBLIC REVIEW PUBLICATION



LEGISLATION NO: _0132-20__

SPONSOR: Seth Damon

TITLE: An Action Relating To Health Education And Human Services, Budget And Finance And NAABIK'IYATI' Committees, And The Navajo Nation Council; Approving And Adopting The Navajo Nation CARES Fund Expenditure Plans For Special Duty Pay, Personal Protective Equipment and Facility Safety Assurance

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LEGISLATIVE SUMMARY SHEET

Tracking No. 0132-20

DATE: February 21, 2020

TITLE OF RESOLUTION: AN ACTION RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, BUDGET AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO NATION COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION CARES FUND EXPENDITURE PLANS FOR SPECIAL DUTY PAY, PERSONAL PROTECTIVE EQUIPMENT AND FACILITY SAFETY ASSURANCE

PURPOSE: This resolution, if approved, will allocate CARES Funds for Special Duty Pay (\$20,000,000), Personal Protective Equipment (\$10,000,000) and Facility Safety (\$10,000,000).

This written summary does not address recommended amendments as may be provided by the standing committee. The Office of Legislative Counsel requests each committee member to review the proposed resolution in detail.

OLC No. 20-208-1

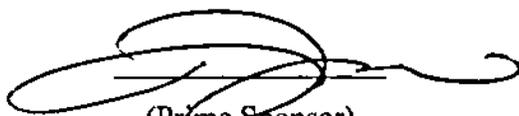
5-DAY BILL HOLD PERIOD:
Website Posting Time/Date:
Posting End Date: 06-16-20
Eligible for Action: 06-17-20

Health Education & Human Services Committee
Thence
Budget & Finance Committee
Thence
Naabik'iyáti' Committee
Thence
Navajo Nation Council

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PROPOSED NAVAJO NATION COUNCIL RESOLUTION
24th NAVAJO NATION COUNCIL -- Second Year, 2020

INTRODUCED BY


(Prime Sponsor)

TRACKING NO. 0132-20

AN ACTION
RELATING TO HEALTH EDUCATION AND HUMAN SERVICES, BUDGET
AND FINANCE AND NAABIK'ÍYÁTI' COMMITTEES, AND THE NAVAJO
NATION COUNCIL; APPROVING AND ADOPTING THE NAVAJO NATION
CARES FUND EXPENDITURE PLANS FOR SPECIAL DUTY PAY, PERSONAL
PROTECTIVE EQUIPMENT AND FACILITY SAFETY ASSURANCE

BE IT ENACTED:

SECTION ONE. AUTHORITY

- A. The Navajo Nation Council is the governing body of the Navajo Nation. 2 N.N.C. § 102(A).
- B. The Naabik'iyáti' Committee is a standing committee of the Navajo Nation Council with the responsibility to hear proposed resolution(s) that require final action by the Navajo Nation Council. 2 N.N.C. § 164(A)(9).
- C. The Budget and Finance Committee is a standing committee of the Navajo Nation Council with the enumerated powers to review and recommend to the Navajo Nation Council the budgeting, appropriation, investment and management of all funds and to promulgate rules and regulations related to contracting and financial matters. 2 N.N.C. §§ 300(B)(1) and (2).

1 D. The Health Education and Human Services Committee is a standing committee of the
2 Navajo Nation Council empowered to provide legislative oversight on matters
3 involving health, social services, education, general governmental services, and human
4 services. 2 N.N.C. § 401(C).

5
6 **SECTION TWO. FINDINGS**

7 A. The World Health Organization (WHO) declared a Public Health Emergency of
8 International Concern related to the outbreak of coronavirus (COVID-19), a highly
9 contagious and sometimes fatal respiratory virus, on January 30, 2020; the U.S.
10 Department of Health and Human Services declared a Public Health Emergency related
11 to the COVID-19 outbreak on January 31, 2020; and the WHO declared a global
12 pandemic due to COVID-19 on March 11, 2020.

13 B. The Navajo Nation Commission on Emergency Management, with the concurrence of
14 Navajo Nation President Jonathan Nez, declared a Public Health State of Emergency
15 on the Navajo Nation on March 11, 2020 due to COVID-19. Resolution No. CEM 20-
16 03-11. The Navajo Nation Department of Health subsequently issued numerous Public
17 Health Emergency Orders. Public Health Orders 2020-001 through 2020-014 are
18 incorporated by reference into this resolution.

19 C. As of June 9, 2020, the Navajo Nation Health Command Operations Center has
20 confirmed 6,150 COVID-19 cases and 285 COVID-related deaths on the Navajo
21 Nation.

22 D. The U.S. Congress on March 27, 2020, enacted the Coronavirus Aid, Relief, and
23 Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (the "CARES Act"),
24 which, at Title V, §5001, entitled "Coronavirus Relief Funds," attached as **Exhibit 1-**
25 **A**, sets aside \$8 billion in emergency aid for Tribal governments for the COVID-19
26 pandemic.

27 E. The CARES Act provides the Coronavirus Relief Fund shall be used to cover only
28 those costs that:

- 29 a. are necessary expenditures incurred due to the public health emergency
30 with respect to COVID-19;

1 b. are not accounted for in the Tribal budget most recently approved as of
2 March 27, 2020; and

3 c. are incurred from March 1, 2020 through December 30, 2020.

4 F. The U.S. Treasury on April 22, 2020 issued "Coronavirus Relief Fund Guidance for
5 State, Territorial, Local, and Tribal Governments" ("Treasury Guidance") related to the
6 permissible uses of the Coronavirus Relief Fund. **Exhibit 1-B.**

7 G. On May 28, 2020, the U.S. Treasury issued "Coronavirus Relief Fund Frequently
8 Asked Questions" ("Treasury FAQ"), attached as **Exhibit 1-C.**

9 H. On or about May 6, 2020, the Navajo Nation received six hundred million five hundred
10 fifty-nine thousand five hundred thirty dollars and ten cents (\$600,559,530.10) as the
11 Nation's share of the U.S. Treasury's initial distribution of 60% of the Coronavirus
12 Relief Fund.

13 I. Navajo Nation Council Resolution CMY-44-20, attached as **Exhibit 1**, established the
14 Navajo Nation CARES Fund, codified at 12 N.N.C. §§ 2601 *et seq.*; the purpose of the
15 Navajo Nation Cares Fund is "to serve as a depository into which the Coronavirus
16 Relief Funds appropriated by the United States for the benefit of the CARES Act are
17 deposited, and from which the Navajo Nation appropriates funds exclusively and only
18 for the uses specified in this Chapter (i.e., 12 N.N.C. §§ 2601 *et seq.*)." 12 N.N.C. §
19 2603 [explanation added].

20 J. The Navajo Nation CARES Fund establishes that the Navajo Nation's expenditures of
21 the Coronavirus Relief Funds will be "accomplished through the approval of an
22 Expenditure Plan(s) adopted by a two-thirds (2/3) vote of all members of the Navajo
23 Nation Council, subject to final action of the President pursuant to 2 N.N.C. § 1005
24 (C)(10), (11), and (12)." 12 N.N.C. § 2604 (A).

25 K. The purpose of the Navajo Nation CARES Fund Special Duty Pay Expenditure Plan,
26 attached as **Exhibit 2**, is to provide twenty million dollars (\$20,000,000) in Special
27 Duty Pay for front line workers and other essential personnel whose duties are
28 substantially dedicated to mitigating or responding to the COVID-19 public health
29 emergency; the expenditures set forth in the Special Duty Pay Expenditure Plan are
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1 necessary to ensure that the Navajo Nation has adequate personnel available to directly
2 respond to the COVID-19 public health emergency.

3 L. The purpose of the CARES Fund Personal Protective Equipment Expenditure Plan,
4 attached as **Exhibit 3**, is to provide ten million dollars (\$10,000,000) for Personal
5 Protective Equipment for front line workers and other essential personnel whose duties
6 are substantially dedicated to mitigating or responding to the COVID-19 public health
7 emergency; the expenditures set forth in the Personal Protective Equipment
8 Expenditure Plan are necessary to ensure that the Navajo Nation's personnel who are
9 responding to the COVID-19 public health emergency are adequately protected.

10 M. The purpose of the CARES Fund Facility Safety Assurance Expenditure Plan, attached
11 as **Exhibit 4**, is to provide ten million dollars (\$10,000,000) to ensure that the facilities
12 operated by the Navajo Nation are disinfected and otherwise safe for returning
13 employees and the public seeking governmental services; the expenditures set forth in
14 the Facility Safety Assurance Expenditure Plan are necessary to ensure that the spread
15 of COVID-19 is mitigated to the greatest extent possible.

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17 **SECTION THREE. APPROVAL AND ADOPTION OF THE NAVAJO NATION**
18 **CARES FUND EXPENDITURE PLANS**

19 A. The Navajo Nation hereby approves and adopts the CARES Fund Special Duty Pay
20 Expenditure Plan, as outlined in **Exhibit 2**; the CARES Fund Personal Protective
21 Equipment Expenditure Plan as outlined in **Exhibit 3**; and the CARES Fund Facility
22 Safety Assurance Expenditure Plan as outlined in **Exhibit 4**.

23 B. The Navajo Nation hereby approves and adopts total funding for the Special Duty Pay
24 Expenditure Plan from the Navajo Nation CARES Fund in the amount of twenty
25 million dollars (\$20,000,000) and allocates the funding to the Office of the Controller
26 for the purposes set forth in **Exhibit 2**.

27 C. The Navajo Nation hereby approves and adopts total funding for the Personal
28 Protective Equipment Expenditure Plan from the Navajo Nation CARES Fund in the
29 amount of ten million dollars (\$10,000,000) and allocates the funding to the Health
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1 Command Operations Center, Department of Health, for the purposes set forth in
2 **Exhibit 3.**

3 **D.** The Navajo Nation hereby approves and adopts total funding for the Facility Safety
4 Assurance Expenditure Plan from the Navajo Nation CARES Fund in the amount of
5 ten million dollars (\$10,000,000) and allocates the funding to the Facilities
6 Maintenance Department, Division of General Services for the purposes set forth in
7 **Exhibit 4.**

8 **E.** The Coronavirus Relief Funds are externally restricted funds and the Navajo Nation
9 Appropriations Act, 12 N.N.C. §§ 800 *et seq.*, as applicable to externally restricted
10 funds, shall apply to the Expenditure Plans set forth herein; detailed Expenditure Plan
11 budgets shall not be subject to further legislative approval and shall, instead, be
12 developed and implemented through expedited budget procedures as directed in CMY-
13 44-20, Section Nine (B).

14
15 **SECTION FOUR. APPROVAL AND ADOPTION OF THE EXPENDITURE**
16 **PLANS' ADMINISTRATION**

17 **A.** The Office of the Controller, Department of Health and Facilities Maintenance
18 Department shall ensure that all funds allocated under their respective Expenditure Plan
19 are only expended for the purposes set forth in **Exhibits 2, 3, and 4.**

20 **B.** The Office of the Controller, Department of Health, and Facilities Maintenance
21 Department shall ensure that all funds allocated under their respective Expenditure
22 Plans shall be incurred and expended by no later than December 30, 2020.

23 **C.** The Office of the Controller, Department of Health and Facilities Maintenance
24 Department shall ensure that no funds allocated under their respective Expenditure
25 Plans are incurred or expended for costs accounted for in the approved Fiscal Year
26 2020 Navajo Nation Comprehensive Budget approved by Navajo Nation Council
27 Resolution No. CS-30-19.

28 **D.** The Office of the Controller shall release the funding allocated under the respective
29 Expenditure Plans as soon as the expedited budget procedures are completed.
30

- 1 E. The CARES Fund Expedited Procurement Rules and Procedures, as set forth in Exhibit
2 1-E, shall apply to procurement activities for the Expenditure Plans set forth herein.
- 3 F. The funds allocated under the Expenditure Plans set forth herein shall be used
4 exclusively and only for the permissible uses set forth in the following:
- 5 1. This Resolution approving the Navajo Nation CARES Fund Hazard Pay
6 Expenditure Plan, CARES Fund Personal Protective Equipment Expenditure Plan,
7 and the CARES Fund Facility Safety Assurance Expenditure Plan.
 - 8 2. The Navajo Nation CARES Fund Act, 12 N.N.C. §§ 2501 *et seq.*, and any rules,
9 regulations or procedures adopted thereunder.
 - 10 3. The Coronavirus Relief Fund which allows only those costs that:
 - 11 a. are necessary expenditures incurred due to the public health emergency with
12 respect to COVID-19;
 - 13 b. are not accounted for in the Navajo Nation Fiscal Year 2020 Comprehensive
14 Budget.
 - 15 c. are incurred from March 1, 2020 through December 30, 2020;
 - 16 4. Consistent with the eligible uses described in the Treasury Guidance which includes
17 the following guidance:
 - 18 a. expenditures must be incurred “due to” the public health emergency which
19 means that expenditures must be used for actions taken to respond to the public
20 health emergency; these expenditures may include expenditures incurred to
21 allow the Tribal government to respond directly to the emergency, such as by
22 addressing medical or public health needs, as well as expenditures incurred to
23 respond to second-order effects of the emergency, such as by providing
24 economic support to those suffering from employment or business interruptions
25 due to COVID-19-related business closures;
 - 26 b. expenditures must be “necessary”; the Department of the Treasury interprets
27 this term broadly to mean that the expenditure is reasonably necessary for its
28 intended use in the reasonable judgment of the government officials responsible
29 for spending Coronavirus Relief Fund payments;
- 30

- 1 c. expenditures may only be made to cover costs that were not accounted for in
2 the budget most recently approved as of March 27, 2020. A cost meets this
3 requirement if either (a) the cost cannot lawfully be funded using a line item,
4 allotment, or allocation with the budget; *or* (b) the cost is for a substantially
5 different use from any expected use of funds in such a line item, allotment, or
6 allocation; and
7 d. expenditures must be for costs incurred during the period that begins on March
8 1, 2020, and ends on December 30, 2020. A cost is "incurred" when the
9 responsible unit of government has expended funds to cover the cost.

10 5. Consistent with the eligible uses described in the U.S. Treasury Frequently Asked
11 Questions (FAQ).

12 6. Consistent with the eligible uses as may be described in any and all future guidance,
13 rules, or regulations of the Department of the Treasury or the Department of the
14 Interior related to the Coronavirus Relief Fund pursuant to Title V of the CARES
15 Act.

16 G. The Office of the Controller, Department of Health and Facilities Maintenance
17 Department expressly agree and affirm that by drawing down any of the funds allocated
18 under their respective Expenditure Plan:

- 19 a. the requested funds shall only be used for the purposes specified in Title V of
20 the federal CARES Act and the Navajo Nation CARES Fund Act;
21 b. the administration, management, and implementation of this Expenditure Plan
22 shall be consistent with the Navajo Nation CARES Fund Act, this legislation,
23 and other applicable laws and regulations of the Navajo Nation; and
24 c. the costs to be covered under this Expenditure Plan are not included in the
25 Navajo Nation Fiscal Year 2020 Comprehensive Budget, approved by Navajo
26 Nation Council Resolution No. CS-30-19.

27 H. As set forth in CMY-44-20, Section Four (B), in the event that Office of the Controller,
28 Department of Health or Facilities Maintenance Department fail to comply with and
29 complete the expedited budget procedures within fifteen (15) days of the date the
30 Expenditure Plans becomes law, the funds allocated to them will revert back to the

1 Navajo Nation CARES Fund, upon the Budget and Finance Committee's acceptance
2 of a report from the Office of Management and Budget.

3 I. All recipients of Navajo Nation funds from the Navajo Nation CARES Fund must
4 follow and apply Generally Accepted Accounting Principles (GAAP), as established
5 by the Governmental Accounting Standards Board (GASB) for governmental entities,
6 and by the Financial Accounting Standards Board (FASB) for public and private
7 companies and non-profits.

8 J. The Health Education and Human Services Committee and the Budget and Finance
9 Committee of the Navajo Nation Council shall serve as the oversight committees for
10 the Navajo Nation Cares Fund Special Duty Pay, Personal Protective Equipment and
11 Facility Safety Assurance Expenditure Plans.

12 K. The Expenditure Plans and expenditures made there under shall be governed by and
13 construed in accordance with the laws and regulations of the Navajo Nation.

14
15 **SECTION FIVE. AMENDMENT**

16 This Resolution may be amended by a majority vote of the Navajo Nation Council subject
17 to action of the President of the Navajo Nation under 2 N.N.C. §164(A)(17).

18
19 **SECTION SIX. EFFECTIVE DATE**

20 This Resolution is effective upon its approval pursuant to 2 N.N.C. § 221(B).

21
22 **SECTION SEVEN. SAVING CLAUSE**

23 Should any provision of this legislation be determined invalid by the Navajo Nation
24 Supreme Court, or a District Court of the Navajo Nation without appeal to the Navajo
25 Nation Supreme Court, those portions of the legislation which are not determined invalid
26 shall remain the law of the Navajo Nation.